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March 7, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Portals II, Room TW-A325  
Washington, DC 20554

Re Federal-State Joint Board on Universal Service, CC Docket No. 96-45  
**EX PARTE PRESENTATION**

Dear Ms. Dortch:

This letter is submitted on behalf of our client, TracFone Wireless, Inc. ("TracFone"), in response to a February 15, 2007 ex parte presentation of Embarq. In its letter, Embarq provides a series of "admittedly simplistic" estimates of the impact on the Universal Service Fund ("USF") if various pending applications for designation as Eligible Telecommunications Carriers ("ETCs") were to be granted. Embarq's letter addresses specifically TracFone's eight pending applications for ETC designation. Using two alternative methodologies, Embarq predicts that granting TracFone's applications would cause USF support to increase by between \$43.5 million and \$62.8 million.

As will be explained herein, Embarq's projections are largely unexplained and are highly speculative, and therefore provide no justification for continued delay by the Commission in granting TracFone's long-pending ETC applications (all of which have been pending since 2004). Notwithstanding its disagreement with Embarq's methodology and its conclusions, TracFone concurs with Embarq's overriding concern that the size of the USF must be brought under control and reduced. Unless responsible steps are taken to limit growth of the USF, the burden on providers and ultimately on consumers of funding the USF will raise the cost of telecommunications services to levels which make them unaffordable for many consumers -- especially low income consumers and those who use small quantities of service, but who rely on availability of affordable wireline and wireless service in order to access the public switched network.

In this regard, TracFone believes that the highest priority USF issue before the Commission is reform of the rules and policies governing distribution of high cost support. Under current rules, wireline incumbent telephone companies receive support based on their historic costs, irrespective of whether those companies are operated efficiently, and irrespective of whether other providers could deliver service to consumers in high cost areas with less USF support. The problem is compounded by the fact that competitive ETCs serving the same areas receive support based on the ILECs' costs, irrespective of their own costs. There is a better way. Proposals to use reverse auctions to distribute high cost funds are being studied by the Federal-State Joint Board on Universal Service. That Joint Board is expected to make recommendations to the Commission in the coming months. TracFone has commented in support of a reverse auctions approach (see Comments of TracFone Wireless, Inc. on Federal-State Joint Board Inquiry on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337, October 10, 2006). While TracFone will not repeat here the reasons noted in its comments why a "winner take all" reverse auctions approach should be implemented, TracFone urges the Commission to act swiftly to reform the manner in which USF high cost funds are distributed.

Embarq claims that TracFone's proposal for offering Lifeline Service to eligible households will bring Lifeline to the attention of more eligible customers and should expand participation of qualifying customers. In that regard, Embarq is correct. As TracFone has stated in each of its ETC applications and in various filings in support of its applications, TracFone seeks to become an ETC so that it can bring affordable wireless service to low income households who could not otherwise afford wireless service, and to increase participation in Lifeline -- a woefully underutilized program. Unlike other ETC applicants, TracFone does not seek high cost support. According to Commission data, participation in the Lifeline program is unacceptably low. Nationally, less than thirty-four percent of eligible households have signed up for Lifeline service. In several of the states where TracFone seeks ETC designation, the participation rates are far worse. For example, as Embarq notes, in North Carolina, only 16.1 percent of eligible households participate. In other states where TracFone seeks to offer Lifeline, the participation rates are even lower: in Florida, 12.4 percent; in Alabama, 8.5 percent; in Tennessee, 6.4 percent; in Virginia, 6.6 percent. [All of these participation rates, except for Florida's, are taken from a Commission source -- *Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302 (2004) at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002); the Florida participation rate is set forth in a petition filed by the Florida Office of Public Counsel and AARP with the Florida Public Service Commission (Petition to Implement Automatic Enrollment For Lifeline Telephone Service), dated October 11, 2006].

There are only two ways in which TracFone will be able to sign up Lifeline customers for its service: i) by capturing customers from other Lifeline providers, and ii) by signing up customers who are not already Lifeline customers. Customers captured from other Lifeline providers will have no impact on the size of the USF since any USF support received by TracFone would be offset by USF support no longer provided to those customers' previous Lifeline providers. New Lifeline customers will increase the size of the USF. However, the primary purpose of the USF is to make available affordable service to all Americans, including those who could not otherwise afford service. This purpose was well-articulated in a recent paper published by the Progress and Freedom

Foundation. That paper states that “. . . the purpose of the Universal Service Fund is to make telephone service affordable to individuals who would not otherwise be able to afford it, either because they are low income or because they live in areas of the country where the cost of providing service is disproportionately high.” (Progress Snapshot - The FCC Asks the Right Questions of USF - Reverse Auctions, a Promising Way to Deliver Funds, by Raymond Gifford and Thomas Lenard, the Progress and Freedom Foundation, August 2006, at 1). TracFone readily acknowledges that a result of any success it has in increasing participation in Lifeline will be to increase the amount of USF support. However, that is hardly a reason not to grant TracFone's applications. Indeed, bringing affordable service to low income households is one of the main reasons why Congress mandated establishment of the USF.

There appear to be no bases for Embarq's projections that TracFone's Lifeline designation would increase USF support by between \$43.5 million and \$62.8 million. The \$43.5 million projection was developed by taking the state-specific Lifeline participation rate for each state where TracFone has sought ETC designation, comparing that rate with the national average participation rate of 33.7 percent, and “splitting the difference.” That approach assumes that over time TracFone will capture many thousands of eligible Lifeline customers who have not heretofore participated in the Lifeline program. Will TracFone achieve this success in a year? two years? five years? some other period? Embarq does not say. Neither is there any explanation for the assumption that TracFone's ability to attract new Lifeline customers will effectively split the difference between each state's participation rate and the national average.

Its second method for predicting the impact of TracFone's Lifeline service on the size of the USF is no less speculative than the first. Under that approach, Embarq simply added ten percentage points to each state's current Lifeline participation rate and assumes that TracFone -- a prepaid wireless provider -- will capture 100 percent of that additional “take” rate. For example, according to Commission data, the Lifeline “take” rate for Virginia is 6.6 percent -- with 20,730 households participating in Lifeline in 2002 (the most recent year for which data are available). In order to reach the 16.6 percent “take” rate projected by Embarq for TracFone, TracFone would need to sign up nearly thirty thousand customers in Virginia alone -- significantly more than all of the existing ETCs have signed up in the decade that the Lifeline program has been in existence.

In summary, TracFone does not disagree that its offering of Lifeline service will require some additional USF support. Such support will be appropriate and will be money well-spent since it will be used to provide affordable service to low income consumers who qualify for assistance. To suggest, however, wholly without explanation, that TracFone's Lifeline program in eight states would increase USF support by \$43.5 million to \$62.8 million is unsupported, unexplained and unexplainable.

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For these reasons as well as those set forth in previous TracFone submissions, TracFone reiterates its request that its long-pending ETC applications be granted and that the Commission promptly consider proposals to reform and improve the manner in which USF high cost support is distributed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MFB', with a long horizontal line extending to the right.

Mitchell F. Brecher

cc: Mr. Thomas Navin  
Ms. Vickie Robinson  
Mr. Kirk Burgee  
Ms. Amy Bender